

1 THE HONORABLE JOHN C. COUGHENOUR
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ZACKERY CHRISTOPHER TORRENCE,

11 v.
12 JASON BENNETT,

13 Respondent.

CASE NO. C24-5541-JCC-GJL

ORDER

14
15 This matter comes before the Court on Petitioner Zackery Christopher Torrence's
16 objections (Dkt. No. 30) to the report and recommendation ("R&R") of the Honorable Grady J.
17 Leupold, United States Magistrate Judge (Dkt. No. 29). Judge Leupold recommends this Court
18 dismiss with prejudice Mr. Torrence's habeas petition and deny Mr. Torrence a certificate of
19 appealability. (*Id.*) Having thoroughly considered the briefing and the relevant record, the Court
20 OVERRULES the objections, ADOPTS Judge Leupold's R&R, DISMISSES the petition (Dkt.
21 No. 6), and DENIES a certificate of appealability.

22 **I. BACKGROUND**

23 Mr. Torrence was convicted in Clark County Superior Court of child molestation, child
24 rape, second degree rape, and indecent liberties with forcible compulsion—he was sentenced to a
25 custodial term of 360 months to life. (Dkt. No. 23-1 at 2, 5, 7.) Mr. Torrence filed a petition for
26 writ of habeas corpus ("petition") pursuant to 28 U.S.C. § 2254. (*See generally* Dkt. No. 6.) In

1 the petition, Mr. Torrence raised the following grounds for relief: (1) improper exclusion of
 2 expert opinion testimony regarding a lack of “grooming” behavior, (2) ineffective assistance of
 3 counsel, (3) prosecutorial misconduct, and (4) improper exclusion of victim impeachment
 4 evidence. (*See generally id.*) After full briefing on the petition, Judge Leupold issued an R&R
 5 recommending dismissal with prejudice. (*See generally* Dkt. No. 29.) In objecting, Mr. Torrence
 6 takes issue with Judge Leupold’s recommendation(s) as to each ground raised in the petition.
 7 (*See generally* Dkt. No. 30.) For the reasons described below, this Court finds that none of the
 8 objections have merit.

9 II. DISCUSSION

10 A. Legal Standard

11 Federal habeas relief is available only where a state court’s decision is “contrary to, or
 12 involve[s] an unreasonable application of clearly established Federal law.” 28 U.S.C.
 13 § 2254(d)(1). “Clearly established” law, in turn, “refers to the holdings . . . of [the Supreme
 14 Court’s] decisions as of the time of the relevant state-court decision.” *Williams v. Taylor*, 529
 15 U.S. 362, 365 (2000). However, before seeking federal habeas relief, a prisoner must exhaust
 16 state remedies. 28 U.S.C. § 2254(b); *see Baldwin v. Reese*, 541 U.S. 27, 29 (2004). Finally, if the
 17 petition is dismissed, the Court may still issue a certificate of appealability—provided petitioner has
 18 made a “substantial showing of the denial of a constitutional right.” *See* 28 U.S.C. § 2253(c)(2).

19 As to this Court’s consideration of the petition, it must conduct a *de novo* review solely
 20 of those portions of Judge Leupold’s R&R to which Mr. Torrence properly objects. 28 U.S.C.
 21 § 636(b)(1); Rule 8, Federal Rules Governing § 2254 Cases (2019).

22 B. Ground 1: Exclusion of Expert Testimony on “Grooming”

23 Mr. Torrence first contended that the trial court erred when it did not allow him to elicit
 24 opinion testimony from the State’s expert witness on “grooming” conduct. (Dkt. No. 6 at 5.) Mr.
 25 Torrence insists such behavior is common in sex offense cases involving children, such that the
 26 jury could infer that, in the absence of such conduct here, he did not commit the charged

1 offense(s). (*Id.*) Nevertheless, after seeking an offer of proof, the trial court barred questions to
 2 the expert on the topic on relevancy grounds. *See State v. Torrence*, 14 Wash. App. 2d 1048
 3 (Wash. Ct. App. 2020) (unpublished) (describing the trial court's ruling as based on ER 402). In
 4 the R&R, Judge Leupold concluded that the petition fails to show the decision is contrary to, or
 5 an unreasonable application of, clearly established federal law. (Dkt. No. 29 at 20.) In objecting,
 6 Mr. Torrence briefly mentions the Confrontation Clause. (*See* Dkt. No. 30 at 4.) But he does not
 7 explain what aspect of Judge Leupold's analysis is incorrect—only that it is. (*See id.*) Thus, his
 8 objections do not trigger this Court's *de novo* review. *See Fed. R. Civ. P. 72(b)(2); Simpson v.*
 9 *Lear Astronics Corp.*, 77 F.3d 1170, 1175 (9th Cir. 1996). And even if it did, the result would be
 10 the same, as the Court would adopt as its own Judge Leupold's analysis. (*See* Dkt. No. 29 at 20)
 11 (citing U.S. Const. amend. VI; *Crawford v. Washington*, 541 U.S. 36, 42 (2004)). It was
 12 reasonable for the trial court to conclude the testimony was irrelevant to Mr. Torrence's guilt, as
 13 there was no evidence of grooming. Regardless, this is not an issue of constitutional import.

14 **B. Ground 2: Ineffective Assistance of Counsel**

15 Mr. Torrence next contends that his right to effective counsel was violated, insofar as his
 16 trial attorney was initially unaware of an e-mail containing potentially exculpatory evidence (the
 17 attorney learned of its existence during trial). (Dkt. No. 6 at 7.) Judge Leupold noted, however,
 18 that this ground has not been properly exhausted (the issue was raised and rejected on direct
 19 appeal and not renewed in requesting discretionary review). (Dkt. No. 29 at 10.) In objecting,
 20 Mr. Torrence does not address exhaustion. (*See* Dkt. No. 30 at 4.) Instead, he reargues the merits.
 21 (*Id.* at 5.) But Judge Leupold's recommendation is not based on the merits—it is based on the
 22 procedural bar that exhaustion presents. On this, there is no objection. (*See generally id.*) And
 23 even if there were, the Court sees no error in Judge Leupold's exhaustion analysis.

24 **C. Ground 3: Prosecutorial Misconduct**

25 Mr. Torrence also contended that the prosecution committed misconduct when presenting
 26 to the jury an anatomical diagram of a pre-pubescent female and soliciting expert testimony

1 about the same. (Dkt. No. 6 at 8.) Mr. Torrence insisted, because the displayed anatomy was not
 2 the victim's, that this evidence is non-probatative and highly prejudicial. (*Id.*) However, Judge
 3 Leupold noted that the petition fails to show how the diagram is anything more than an
 4 illustrative aid. (Dkt. No. 29 at 23.) In objecting to this determination, Mr. Torrence argues Judge
 5 Leupold erred because the evidence "caused [a] rapid response in the jury's mind" and resulted
 6 in a "highly prejudicial inference purporting to connect[] the alleged victim . . . to the diagram."
 7 (Dkt. No. 30 at 2.) This is no more than a restatement of his contention that the evidence is
 8 prejudicial. Critically, it does not explain *why* such information is prejudicial (or how it
 9 substantially outweighs its probative value).¹ In objecting to Judge Leupold's recommendation,
 10 Mr. Torrence does not meaningfully address the legal requirements for establishing prosecutorial
 11 misconduct on a constitutional level.² (*See generally id.*) Thus, he presents this Court with no
 12 basis to grant his objection.

13 **D. Ground 4: Exclusion of Impeachment Evidence**

14 Finally, Mr. Torrence contended that the trial court erred in disallowing impeachment
 15 evidence regarding the victim's conduct. (Dkt. No. 6 at 10.) Judge Leupold noted, however, that
 16 this ground (like Ground 2) has not been properly exhausted (the issue was raised and rejected in
 17 a personal restraint petition made to the Washington Court of Appeals but not renewed when
 18 seeking discretionary review). (Dkt. No. 29 at 10.) In objecting, Mr. Torrence again fails to
 19 address the exhaustion requirement. (*See* Dkt. No. 30 at 4.) Instead, he reargues the merits. (*Id.* at
 20 5.) Again, this is insufficient to trigger *de novo* review.

21
 22
 23 ¹ Mr. Torrence's objection contains a passing reference to *State v. Gregory*, 147 P.3d 1201, 1215
 24 (Wash. 2006). (Dkt. No. 30 at 2.) But the issues there (namely, a prosecutor's off-hand
 25 comments at closing and the court's decision to exclude evidence pursuant to Washington's rape
 shield statute) have no import to the issues presented here.

26 ² The offending behavior must "so infect[] the trial with unfairness as to make the resulting
 conviction a denial of due process." *Darden v. Wainwright*, 477 U.S. 168, 181 (1986).

1 **III. CONCLUSION**

2 For the reasons described herein, the Court therefore OVERRULES Mr. Torrence's
3 objections (Dkt. No. 30), ADOPTS the R&R (Dkt. No. 29), DISMISSES the petition (Dkt. No.
4 6) with prejudice, DENIES a certificate of appealability,³ and DIRECTS the Clerk to send copies
5 of this order to Mr. Torrence and to Judge Leupold.

6

7 DATED this 28th day of April 2025.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

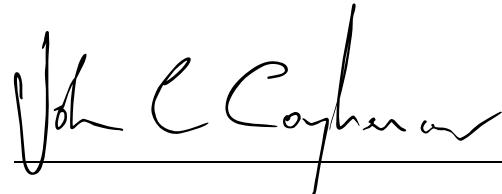
22

23

24

25

26



John C. Coughenour
UNITED STATES DISTRICT JUDGE

³ Mr. Torrence does not object to Judge Leupold's recommendation on this issue and, regardless, Mr. Torrence fails to make the required showing for a certificate.